

RWANDA / JUDGMENT

NIYIBOGORA v DORISI ET AL

RS/INJUST/RP 00003/2019/CA

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Text

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NIYIBOGORA v DORISI ET AL. [Rwanda COURT OF APPEAL – RS/INJUST/RP 00003/2019/CA (Kamere P.J,) 16 October 2020] Criminal procedure – Appeal – Appealing for the damages in the criminal case – In case the claimant for the damages is the only one who appealed, the appellate court cannot sentence the accused even if it finds the accused guilty. Facts: The case began in Musanze Intermediate Court, the Prosecution suing Dorisi, Hakizimana and Naburugero for committing fraud. Doris and Hakizimana made a statement stating that Doris had sold the plot to Hakizimana, and used Naburugero, who was a land notary, to produce fake land transfer documents based on that purchase, and the latter was working in Cyuve sector while the land was in Muhoza sector, and their wives Niyibogora and Twizeyimana were not informed about that transfer. The court ruled that Dorisi and Hakizimana were sentenced to 6 years of imprisonment for committing an offence of counterfeit and use of a counterfeit document, while Naburugero was convicted of issuing a document by a competent civil servant to a person who is not entitled to it and was also sentenced to 6 years of imprisonment. Defendants were not satisfied with the ruling and appealed to the High Court, Musanze Chamber, the court ruled that Dorisi and Hakizimana were not guilty of counterfeit and use of a counterfeit document, and that

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Naburugero was not guilty of issuing a document by a competent civil servant to a person who is not entitled to it, because it found that the evidence produced by the Prosecution was doubtful. Niyibogora wrote to the President of the Court of Appeal requesting that the case be reviewed on the grounds of injustice in respect of compensation, and she also wrote to the President of the Supreme Court requesting that the case be reviewed on the grounds of injustice, and the President of the Supreme Court ruled that the case be referred to the Court of Appeal for trial. Counsel Bizumuremyi, representing Niyibogora, stated that the reason for the review was that the High Court had ignored the evidence and acquitted the accused. Evidences disregarded are: a marriage certificate confirming that Nibogora is the official wife of Dorisi under community of property; the purchase agreement for the property is flawed; the land title was issued shortly after their marriage, indicating that the land was theirs, that if it had been sold it would have been registered to Hakizimana; the transfer of land took place about five years ago, and it is not understandable how Dorisi waited for that time to transfer the land he had sold; Dorisi's short message to Niyibogora; the statement of Dorisi's interrogation appears to contradict Hakizimana; a document stating that they have applied for a bank loan and built a house, a document stating that they have been paying their taxes annually from 2011 until the beginning of the trial. Bizumuremyi further states that with regard to Naburugero, the evidence was ignored by the High Court,

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which led to Niyibogora's injustice because when filling in the form requesting the transfer of land titles, Dorisi was asked if he was married and he confirmed it, but Naburugero decided not to summon her in order to protect her interests, he did not even call Hakizimana's wife while he had to do so, even though the land was 100% registered to Dorisi. He concludes that if all those evidences were examined by the High Court, Musanze Chamber, it would have shown that the purchase agreement was a counterfeit document. The prosecutor's office stated that the evidence it produced in the High Court, that it had sued motivating how the statement made in Hakizimana's house was false, as stated by Ntihabose, as Dorisi had sued for divorce, in order to win the title of the plot and the house in it, that in the the judgment rendered by Musanze High Court, in paragraph 14, ruled that that agreement was counterfeit, while the High Court, Musanze Chamber only heeded the transfer of land deeds made in the absence of its proprietors, and the defendants were acquitted, resulting in Niyibogora being deprived of property rights, which led to injustice she faced. Dorisi claims to be the victim of an injustice, as a case was decided on 20/01/2018 by Musanze Intermediate Court, which ruled that the purchase agreement was legally binding, and that there was a final judgment of 28 /01/2019 between Dorisi and Niyibogora, stating that they agreed that they had no common property. He also stated that the fact that he was the one who applied for the building permit, was due to the fact that he had not yet made the transfer of land titles with Hakizimana, and that

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the "construction permit" was issued with the name of the person whom the land was registered to. As for the text message (SMS) allegedly sent to Niyibogora, he admitted that they had a house in Musanze, stating that he had never sent it to her, that Niyibogora could also pick up his phone and send it to himself, while in the case of being the taxpayer for the plot of the house under dispute until 2016, claiming that Hakizimana was the one who paid the tax, but on the tax receipt documents it appeared that it was Dorisi who paid the tax, because the plot was still registered to him. Regarding the loan for the salary advance taken in 2013, he elucidates that the money requested from Banque Populaire was not for the construction of the house as stated by Niyibogora, because the money given could not build the house, that instead the money was used as school fees for Niyibogora. Hakizimana, meanwhile, states that he bought the land with Dorisi as a single but did not immediately conclude the transfer, that the fact that the building permit was written on Dorisi was that they had not concluded the land transfer yet and the taxes were paid in Dorisi's name because he was the registered owner but that he was the one who paid them. The fact that Dorisi lived in the house he was building was because he had hired him as an engineer who knew how to build and supervise the construction activities, that the transfer which took place later was not a problem because it was done on the basis of a purchase agreement they had made and Dorisi was the sole proprietor and it was done before the Land Notary.

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Naburugero also defended himself by stating that as Land Notary, he was deployed by his superior in Muhoza sector from Cyuve to replace the one who was in a leave, which is why he was the one who concluded the transfer of land titles. The fact that Niyibogora was summoned to sign the transfer did not violate the law because the transfer of the right to the land bases on the title deed, and that land was 100% registered to Dorisi. He further elucidates that the fact that the Prosecution argues that he had to first look at the management of the property of those who were going to carry out the transfer of land titles was not correct, because the "system" in which they operate as land notaries in Rwanda is based on the land title deed, so that he should not go beyond of the content of the land title deeds and ask those who came to do the transfer of land titles how they manage their property. Held: 1. In case the claimant for the damages is the only one who appealed, the appellate court cannot sentence the accused even if it finds the accused guilty, therefore, though Doris, Hakizimana and Naburugero are declared guilty of the charges against them, no penalty has to be imposed on them because the Prosecution did not appeal, instead, Niyibogora has to be awarded the damages she applied for. Application to review the judgment due to injustice has merit; The judgment under review due to injustice is reversed in part.

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Statutes and statutory instruments referred to: Law N° 30/2018 of 02/06/2018 determining the jurisdiction of courts, articles 55 and 63; Organic Law N° 01/2012/OL of 02/05/2012 instituting the penal code , articles 613 and 614; Ministerial Order n° 002/2008 of 01/04/2008 determining modalities of land registration, article 10. Cases referred to: RS/INJUST/RP 00006/2017/CS rendered on 29/11/2019.

Judgment**I. BACKGROUND OF THE CASE**

In Musanze Intermediate Court, the Prosecution charged Dorisi Melchiade, Hakizimana Sylvain and Naburugero Giramahoro Ajja with fraud, alleging that Dorisi Melchiade and Hakizimana Sylvain, together, issued a statement dated 22/07/2011 stating that Dorisi Melchiade sold to Hakizimana Sylvain a plot no PC 992 located in Mpenge Cell, Muhoza Sector, Musanze District, Northern Province, with the help of Naburugero Giramahoro Ajja, a Land Notary in Cyuve Sector, who fraudulently issued to them documents provided by the competent authorities including false claims of land transfer based on the purchase agreement between them, ignoring the fact that the plot is located in Muhoza Sector, and that Dorisi Melchiade and Hakizimana Sylvain also

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are married men, to namely Niyibogora Christine (wife of Dorisi Melchiade) and Twizerimana Kwitonda Emerita (Hakizimana's wife), who had to be summoned and give their consent on the transfer of land titles, even ignoring the value of the land, as in the purchase agreement they wrote that they had bought it for two and three hundred million francs (2,300,000 Frw), ignoring that the house in that plot is valued at Rwf up to fifty million (50,000,000 Frw).

In the judgment RP 00205/2017 /TGI /MUS rendered on 07/12/2017, Musanze Intermediate Court ruled that Dorisi Melchiade and Hakizimana Sylvain were convicted of counterfeit and use of a counterfeit document and sentenced each to six years of imprisonment (6), while Naburugero Giramahoro Ajja was convicted of issuing a document by a competent civil servant to a person who is not entitled to it, and sentenced him to six

(6) years of imprisonment, ordering them to jointly pay Niyibogora Christine compensation of three million and three hundred thousand (3,300,000 Frw).

Dorisi Melchiade, Hakizimana Sylvain and Naburugero Giramahoro Ajja have appealed to the High Court, Musanze Chamber, their charges being consolidated in case RPA 00572/2017 / HC / MUS - RPA 00010/2018 / HC / MUS - RPA 00018/208 / HC / MUS, and the Court found that their appeal is well-founded, that Dorisi Melchiade and Hakizimana Sylvain are not guilty of counterfeit and use of a counterfeit document, that Naburugero Giramahoro Ajja is not guilty of issuing a document by a competent civil servant to a person who is

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not entitled to it, as it found the evidence adduced by the Prosecution was doubtful, ordering Niyibogora Christine to pay court costs amounting to twenty thousand Rwandan francs (20,000 Frw).

Following the adjudication of the case, Niyibogora Christine wrote to the President of the Court of Appeal requesting that judgment RPA 00572/2017 / HC / MUS - RPA 00010/2018 / HC / MUS - RPA 00018/208 / HC / MUS be reviewed for reasons of injustice, and the latter also wrote to the President of the Supreme Court, requesting that the case be reviewed for reasons of injustice, and on 19/07/2019 in decision n° 138 / CJ / 2019, the President of the Supreme Court ordered that the case be referred to the Court of Appeal for trial, and was registered to RS/INJUST / RP 00003/2019/CA.

The case was heard in public on 10/02/2020, Niyibogora Christine represented by Counsel Kabagema Aphrodice and Counsel Bizumuremyi Félix, Dorisi Melchiade represented by Counsel Kavuyekure Dieudonné, Hakizimana Sylvain represented by Counsel Nsengiyumva Straton in collaboration with Counsel Dukundane Anastase, and Naburugero Giramahoro Ajja represented by Counsel Nsengiyumva Enos, while the Prosecution was represented by Rudatinya Gaspard, the National Prosecutor, and the case was closed, but before it was decided, one of the jugdes of the jury was transferred to the Supreme Court, resulting in a retrial by another jury on September 09/09/2020, Niyibogora Christine represented by Counsel Bizumuremyi Félix, other parties represented as before.

Page 9**II. LEGAL ISSUES AND THEIR****ANALYSIS**

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- a. To determine whether the application filed by Niyibogora Christine for the review of the judgment due to injustice should not be admitted, for she was still having another alternative of appeal

Nsengiyumva Enos, counsel for Naburugero Giramahoro Ajja, states that in accordance with Article 55, paragraph 2, of Law N° 30/2018 of 02/06/2018 determining the jurisdiction of courts, which provides that any party entitled to ordinary and extraordinary remedies but that fails to assert his/her right within the time limit provided by law, is not allowed to apply for review of a case he/she lost because of injustice, finds that the complaint filed by Niyibogora Christine seeking the review of judgment no. RPA 00572/2017 / HC / MUS

- RPA 00010 / 2018 / HC / MUS - RPA 00018/208 / HC / MUS rendered by the High Court, Musanze Chamber, should not be admitted, as she has not yet used the process in place for review provided by Articles 193 and 194, of Law No. 30/2013 of 24/05/2013 on Criminal Procedure, alleging that her injustice was based on ignored evidence, including evidence she produced, including her gains after the case was adjudicated.

Counsel Kabagema Aphrodice, representing Niyibogora Christine, argues that the objection raised by Naburugero Giramahoro Ajja is unfounded, as he does not

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fully understand the reason for her application for the review of the judgment instead of requesting a review on the grounds of injustice, for the evidences she claims to be new are really not, but all those evidences have been used in the trial of the High Court, Musanze Chamber.

Counsel Bizumuremyi Félix, also representing Niyibogora Christine, argued that she had applied for the review of the judgment on the grounds of injustice in accordance with the provisions of Article 55, paragraph 2, of Law N° 30/2018 of 02/06/2018 determining the jurisdiction of the courts, because he considered that there was no other way to appeal, and that the High Court, Musanze Chamber, had ignored some evidences produced while they were pleaded on.

Determination of the Court

Article 55, paragraph 2, of the Law N° 30/2018 of 02/06/2018 determining the jurisdiction of courts, provides that : “However, any party entitled to ordinary and extraordinary remedies but that fails to assert his/her right within the time limit provided by law, is not allowed to apply for review of a case he/she lost because of injustice, except instances of such injustice identified by the Inspectorate General of Courts”.

With regard to the review of the case, Article 194, section 5, of Law N° 30/2013 of 24/05/2013 relating to Criminal Procedure that was into force when Christine Niyibogora applied for a review on the grounds of injustice, provides that: “The application for review may be filed on the following grounds: (...) if, after the judgment, conclusive evidence sufficiently showing

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injustice caused by the judgment subject to review is uncovered; while such evidence was submitted in the case file but was not seen by the court”.

The court finds that Naburugero Giramahoro Ajja's Counsel arguing that Niyibogora Christine was still in the process of applying for the review of the case, before she applies for the review of the judgment on grounds of injustice, lacks merit, as he did not show an unequivocal evidence obtained after the verdict, or an evidence that was in the case file that the judge disregarded, which is being used by Niyibogora Christine in the case, while Niyibogora Christine's counsels state that all evidences being produced have been used in the trial, but finds that the verdict was unfair.

Based on the above-mentioned legal provisions and the foregoing, the Court finds that the objection to dismissal of the complaint raised by Naburugero Giramahoro Ajja is unfounded.

- b. To determine whether Dorisi Melchiade and Hakizimana Sylvain have fraudulently made the purchase deed of the plot registered on UPI :4/03/08/03/992 and whether Naburugero Giramahoro Ajja, as Land Notary, was involved in the fraud alleged by Niyibogora Christine by issuing to them a document they were not entitled to

Counsel Bizumuremyi Félix, representing Niyibogora Christine, states that Dorisi Melchiade and Niyibogora Christine were married on 15/09/2011, under community of property regime, and when Niyibogora Christine married him, he had an unbuilt plot registered

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on UPI: 4/03/08/03/992 and paid for it taxes from 2011 to the present case, that in February 2013 they applied for the construction permit (autorisation de bâtir), and they started building the house on the site using burnt bricks from the Cooperative to which Dorisi Melchiade belonged, in September 2013, they applied for a loan in Banque Populaire, Musanze Branch, in order to cover the house and buy doors and windows for it, and then they lived in it, and gradually built it up, as they were also earning monthly salaries.

He further added that while Dorisi Melchiade was in the process of seeking a divorce, he began planning how he will own the house, and together with Sylvain Hakizimana, they made a purchase agreement for the plot with UPI: 4/03/08/03/992, and set a date that is prior to the marriage of Dorisi Melchiade and Niyibogora Christine, and stated that the agreement was concluded on July 22, 2011, and they signed that agreement before the Notary on October 28, 2016, and the plot that belonged to Dorisi Melchiade was transferred to Hakizimana Sylvain, and they did all of this fraudulently, because Notary Naburugero Giramahoro Ajja officiated the land transfer without any worry, yet both have married wives, and the form he gave them shows the column where it is filled in the status of the seller of the land, resulting in being deprived of a 50% of the plot where her husband and her should build the house, but unfortunately her husband sold it without her consent.

He finds that in the judgment under review, the High Court, Musanze Chamber reversed the judgment

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rendered by Musanze Intermediate Court, acquitted the accused, and the damages awarded were disregarded in view of all the following evidence produced by the Prosecution : - The marriage certificate that indicates that Dorisi Melchiade was married to Niyibogora Christine in a community of property regime. - The purchase agreement dated 22/07/2011 is defective, as it is signed by the Village Head, but there is no stamp, because if it had existed, it would have been clear that the purchase agreement was a counterfeit, because Dorisi Melchiade had registered land and house to him just when he was about to file for divorce ; - The property deed was issued

on 05/10/2011, shortly after their marriage : if Dorisi Melchiade had sold the land, that deed would not have been issued in the names of Doris Melchiade; - The land transfer took place on 28/10/2016, almost 5 years ago, with the question of what Dorisi Melchiade was waiting for to give the land he had sold ; - Doris Melchiade texted (sms) Niyibogora Christine between 9 - 12/07/2016, when she asked him to find a house in Kigali to find a place to raise their child, and the latter replied that he could not look for another house in Kigali while the one in Musanze was not yet complete, meaning that he also acknowledged that the house was shared ;

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- The statement of the interrogation of Dorisi Melchiade in the Prosecution, where he was asked how he lived in the house, and claimed that he was renting it for 25,000 Frw, while Hakizimana Sylvain stated that they were living in it for free ; - There are records showing that on 12/09/2013 they applied for a loan of 3,800,000 Frw from the Banque Populaire, Musanze branch, and they started construction activities ; - Records showing that they have paid the property annual taxes from 2011 until the trial begins ;

According to Félix Bizumuremyi, in the case of Naburugero Giramahoro Ajja, the evidence ignored by the High Court, Musanze Chamber which caused Niyinogora Christine to suffer from injustice is related to the fact that in a form requesting the transfer of land titles, Dorisi Melchiade was asked if he was married and replied positively, but for Naburugero Giramahoro Ajja did not summon his wife Niyibogora Christine so that her interests would not be harmed, nor did he summon the wife of Hakizimana Sylvain, while he was supposed to do so, so even though the land was 100% registered to Dorisi Melchiade, but Naburugero Giramahoro Ajja had to summon Melchiade Dorisi's and the wife of Hakizimana Sylvain to give their consent.

He added that Naburugero Giramahoro Ajja was a Land Notary of Cyuve Sector, and not Muhoza Sector, except that when interrogated by the Investigation, he

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stated that he had the power to carry out notarial activities in another Sector, but that he was verbally given that power, in Musanze Intermediate Court, he alleged that there was a document authorizing him to deliver such services, which he cunningly searched for and uploaded it in the iecms, while he had previously stated that he had got it verbally.

Counsel Bizumuremyi Félix also states that Naburugero Giramahoro Ajja, as a Land Notary had to take into account the provisions of Article 36 of the Notary Labor Act, outlining the requirements before signing the transfer of land titles, and Article 37 of the law that requires him to be prudent before signing a deed of transfer of land titles, that both clauses show that before the Land Notary Officer Naburugero Giramahoro Ajja, by signing the deed of the transfer of land titles, he had to first inquire into the identifications of Dorisi Melchiade and Hakizimana Sylvain, to check whether no one else shared the property, especially that he was operating in another sector.

He concludes that if all the evidences had been examined by the High Court, Musanze Chamber, it would have been clear that the purchase agreement was set shortly before the marriage of Dorisi Melchiade and Niyibogora Christine was a counterfeit document given a date different from the one it was made (antidaté), resulting in convicting Dorisi Melchiade and Hakizimana Sylvain counterfeit or use of a counterfeit document, and Naburugero Giramahoro Ajja of Issuing a document by a competent civil servant to a person who is not entitled to

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it, and award damages to Niyibogora Christine, as their crimes resulted in making Dorisi Melchiade the sole proprietor of a shared property valued at fifty million Rwandan francs (50,000,000 Frw).

The Prosecution's representative argues that the evidence produced in the High Court, Musanze Chamber, was ignored, that it had alleged that the agreement reached on 22/07/2011 was forged in the house of Sylvain Hakizimana, as stated by Ntihabose Modeste, which was a counterfeit, because Doris Melchiade had initiated a divorce case, in order to win the title and the house in question, that in a judgment rendered by Musanze Intermediate Court, in paragraph 14, the agreement was found to be a counterfeit, while the High Court, Musanze Chamber only considered the land transfer deed that was made in the absence of the land proprietors, and the defendants were acquitted, resulting in Niyibogora Christine being deprived of property rights, which was the reason for her to be wronged.

He further added that the High Court, Musanze Chamber, held that the agreement signed on 22/07/2011 was correct, based on the fact that it was signed, which it found sufficient, ignoring the fact that some of the signatories had confirmed that it took place at Hakizimana Sylvain's home, who did not arrive at the scene of the sale, wondering what the evidence was that it had been sold, while they have not seen the product to be sold and confirm that it was available, that the other negligence was that some of the witnesses to the purchase belonged to the Dorisi Melchiade family, and that the buyer was

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also a member of the family, and even his signatories are his relatives, who have also examined the issue between him and his wife in her absence, indicating that the parties to the agreement were the ones who wanted to help Dorisi Melchiade conceal the property, as they felt he was not in a good relationship with his wife.

The Prosecution's representative alleges that the High Court, Musanze Chamber, ignored the fact that in a text message (sms), Dorisi Melchiade wrote to his wife on 09/07/2016 and 12/07/2016, stating that they had a house in Musanze, he did not disclose any other house than the one under dispute, that the message was invalidated by the judge and should have served as proof that the house belonged to the family, and that the plot on which it was built had not been sold.

He also alleges that it was ignored that Doris Melchiade alleges that he sold the house on 22/07/2011, married to Niyibogora Christine on 15/09/2011, that he sold the property registered to him 100% as a sole proprietor, yet ignoring the fact that they were married under a community of property regime, that if Dorisi Melchiade had sold the land on 22/07/2011, he should have not concluded the transfer of the land title based on the purchase (mutation) after a all five (5) years, that one should question what Sylvain Hakizimana was building on his trust when the land he had allegedly bought was still registered to Dorisi Melchiade, that, even though the land was registered Doris Melchiade 100% as a sole proprietor, this one would not have sold it without the consent of his wife, because they were married under a

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community of property regime, and that even during the transfer of land rights (mutation) his wife had to be present as provided for in the affidavit.

The Prosecutor's Office alleges that the High Court, Musanze Chamber ignored Dorisi Melchiade's claim that he had sold the plot of land to Hakizimana Sylvain, in which a house was built, and he and his wife had moved into it when completed, and rented it for twenty-five thousand francs (25,000 Frw), while Hakizimana Sylvain stated that they were living in it for free, which is unlikely to have sold him a plot of land, built a house in it, completed it and resettled in it before they conclude a transfer of land titles.

He concludes that all of this has led to injustice, as the case that deprived Niyibogora Christine of her property rights based on a marriage dated 15/09/2011, and therefore based on Article 63 of Law No. 30/2018 of 02/06/2018 determining the jurisdiction of the courts, the Prosecution requests that the Court of Appeal consider all the evidence presented, and affirm the conviction of the accused and uphold the sentence imposed by Musanze Intermediate Court.

Dorisi Melchiade claims to be the victim of an injustice, as there was a judgment RADA 00006/2017 / TGI / MUS rendered on 20/01/2018 by the Musanze Intermediate Court that has acquired res judicata principle, which ruled that the purchase agreement was made in accordance with the law, that there was also a judgment RC 00071/2018 / TB / MUH and RC 00188/2017 / TB / MUH dated 28/01/2019 between Doris

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Melchiade and Niyibogora Christine which also was also final, stating that Niyibogora Christine and Dorisi Melchiade agreed that they have no common property.

He further states that he sold the plot registered to UPI: 4/03/08/03/992 while he was still single on 22/07/2011, and he was married to Niyibogora Christine on 15/09/2011, and that Sylvain Hakizimana who bought it asked him to build a house on it, because he was an construction engineer, he built the house, and he moved into it when it was not yet completed and rented it for twenty-five thousand francs (25,000 Frw) due to the life he was living, because his wife Niyibogora Christine had abandoned him, so stating that he rented the house, and Sylvain

Hakizimana stated that he lived in it for free, he finds no problem with it, because when he was working there, he lived in it for free, and pay rent when he was not living in it for work puproses.

He further added that the fact that he was the one who applied for the construction permit (autorisation de bâtir), was due to the fact that he had not yet done the transfer of land titles with Sylvain Hakizimana, and that the construction permit was issued with the names of the person whom the land was registered to.

Dorisi Melchiade, who reportedly sent a message to Niyibogora Christine acknowledging that they had a house in Musanze, stated that he had never sent it to him, that Niyibogora Christine could also pick up his phone and send it to herself, and with regard to the fact that he was the one who paid the property tax of the plot in which the house in dispute was built until 2016, he claims that

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Sylvain Hakizimana was the one who paid the taxes, but in the names of Dorisi Melchiade, because the plot was registered to him.

With regard to the Prosecution's statements that those who signed the purchase agreement belonged to his family, and that they appear in the family's statement of dispute resolution between him and Niyibogora Christine, Dorisi Melchiade finds no mistake in it, because he sold the land before getting married and sold in presence of his family, because it was the one who used to help him in all his propblems, that the delay in transferring the land to Hakizimana Sylvain was due to the fact that Hakizimana Sylvain was available on 28/10/2016, as he was on a lot of work.

Kavuyekure Dieudonné, Dorisi Melchiade's Counsel, argues that judgments RC 00071/2018/ TB/ MUH and RC 00188/2017/ TB/MUH of 28/01/2019 contradict the statements of the representatives for Christine Niyibogora, as she herself testified before the court that she had no property in common with Dorisi Melchiade, and that her statement came two (2) years after the judgment RP 00205/2017 / TGI / MUS was rendered, as it was decided on 07/12/2017, that the value of the judgment was final in respect of property makes them believe that Niyibogora Christine's statement is justified.

Counsel Kavuyekure Dieudonné adds that the concerned text message (sms) in this case that Doris Melchiade wrote to Niyibogora Christine was incorrect, and that it was of no use to her, as she admitted that she had no shared property with Dorisi Melchiade, and that

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the said message was reportedly sent in 2016, while the purchase of the property had already taken place before.

He further states that the purchase agreement is not a counterfeit, because the parties signed the agreement and confirmed that it happened, that the fact that the agreement carries two different dates, it was due to the fact that they set the date on which the Village Head signed it, and that no one denies that Purchase agreement dated 22/07/2011, as Niyibogora Christine never sued to invalidate it, and that the identity of the property owner was a land title, the title deed was 100% registered to Dorisi Melchiade, and Niyibogora Christine has never sued for this.

Counsel Kavuyekure Dieudonné states that Dorisi Melchiade applied for a building permit for Sylvain Hakizimana, as the plot was registered to him, that he was the one paying the taxes, but came in the name of DORISI Melchiade, because Sylvain Hakizimana had not entered the "system" due to the fact that the plot was not yet registered to him, that as to the delay in the transfer of land titles, there is no problem with it, for it is done at any time, and there is no time limit set by law.

As for the fact that Dorisi Melchiade lived in a house built on a plot of land owned by Hakizimana Sylvain, Counsel Kavuyekure Dieudonné states that Dorisi Melchiade lived in that house when he was building it as an employee, and when he was not working on that house he paid a rent to Hakizimana Sylvain of twenty-five thousand francs (25,000), so that he did not

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have to rent while there were some tools belonging to Hakizimana Sylvain he had to protect.

Regarding a salary advance loan of 3,787,560 Frw taken in 2013, Counsel Kavuyekure Dieudonné states that the money requested by Dorisi Melchiade from Banque Populaire, Musanze branch was not for the construction of the house, as stated by Niyibogora Christine, for that amount cannot build a house which is said to be worth fifty million francs (50,000,000 Frw), that instead the money was spent on the schooling of Niyibogora Christine.

He finds that there is no way Doris Melchiade could have forged the purchase deed, as it the land was already registered to him, which is in line with the provisions of Article 18 of the Land Use Act of 2013, which provides that the land owner is the one to whom it is registered and that in the process of transfer of land titles, only the person to whom the land is registered is needed, which is why it was not necessary for Dorisi Melchiade to be accompanied with his wife Niyibogora Christine to the Land Notary.

Sylvain Hakizimana alleges that he bought the land with Dorisi Melchiade being single, who had also bought it with others, made a transfer of land titles, but before the documents came out, he built a house, and gave Dorisi Melchiade a job to look after the progress of the construction work as a civil engineer (Ingénieur civil), that because the site was registered to Dorisi Melchiade because they had not yet transferred the title of the land, it resulted in a building permit (autorisation de bâtir) being

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issued to Dorisi Melchiade and the tax receipt was also written in his name though it was paid by Sylvain Hakizimana, so it was necessary for Dorisi Melchiade, to whom the land titles were registered 100% as a sole proprietor, to remove it, as he had already sold it, and on the 28th / 10/2016 the land was registered to Hakizimana Sylvain who had bought it, which was done in front of the Land Notary named Naburugero Giramahoro Ajjya, and Sylvain Hakizimana officially became the proprietor of the disputed plot.

Hakizimana Sylvain also alleges that Dorisi Melchiade lived in the house he was building for him, and when he was in other businesses not related to building of this house, he used to pay a rent of twenty-five thousand francs (25,000 Frw), that the delay in transferring the right to land was due to the fact that they had agreed to do it whenever he wanted it, and that it didn't matter to him.

Counsel Nsengiyumva Straton, representing Sylvain Hakizimana, argues that the basis for the Prosecution's complaint is a complaint filed by Niyibogora Christine requesting that the long-term lease agreement be invalidated, but after examination, the Court found it lawful, the reason why he finds that this judgment should not be invalidated, that rather this Court should consider why Niyibogora Christine has not been pursuing this house she claims to be hers for five (5) years, in order to ask that it be registered to her.

He further states that he does not produce evidence accusing him of counterfeiting the contract which would have been ignored by the High Court, as stated by

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Niyibogora Christine, while the buyer and seller signed and agreed to it, and that the purchase agreement dated 22/07/2011 states that Dorisi Melchiade sold the plot instead of the house.

Counsel Nsengiyumva Straton also states that the fact that the witnesses appearing in the purchase agreement are family friends, does not matter, as there is no barrier to it, and that some of them including Gatete Callixte and Ntihabose Modeste have no relationship with DORISI Melchiade who sold or/and Hakizimana Sylvain, who bought it, so that Niyibogora Christine and the Prosecution have no reason to state that the contract was a counterfeit.

Regarding the text message that Dorisi Melchiade has reportedly been sending to Niyibogora Christine, Counsel Nsengiyumva Straton states that message has nothing to do with Sylvain Hakizimana, because they can even talk about it with the intention to fraud him.

Counsel Nsengiyumva Straton concludes by stating that the fact that Dorisi Melchiade and Hakizimana Sylvain made the transfer of land titles late cannot be considered as proof that the purchase agreement was a counterfeit, as there is no law punishing it, and therefore the non-disclosure of the law is not a sign that the purchase agreement is a counterfeit, and the fact that Hakizimana Sylvain did not inform his wife about the transfer of land titles cannot be considered as an evidence of counterfeit, because he had no problem with his wife.

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Naburugero Giramahoro Ajja states that he went to work as a Land Notary in Muhoza Sector, because his local Notary, Sebutwa Félicien, was on leave, he was sent by his superior to work, and the law of the notaries provided for it. He further elucidates that although on the "form" there is a column where it is filled in whether people concluding the transfer of land titles are single or married, this does not exclude the law governing notaries, especially Articles 5 and 23 of Ministerial Order No. 002 / 2008 of 01/04/2008 governing Land registartion, which stipulates that in the transfer of land titles they consider only people to whom the land tiltes are registered, and that the land was 100% registered to Dorisi Melchiade

Naburugero Giramahoro Ajja also argues that the fact that the Prosecution argues that he had to first look at the management of the assets of those who were going to carry out the transfer of land rights was incorrect, as the system in which they operate as land notaries in Rwanda is based on the content of the deed of land, so that he should not go beyond of what is was written on the deed of land and ask those who came to do the transfer of land title how they manage their property.

He also states that the form filled in by Dorisi Melchiade for the transfer of land titles, he mentioned that he has a wife, but that it is not the basis for the transfer of land titles, but rather the transfer bases on the aforemntioned legal provisions.

Counsel Nsengiyumva Enos, representing Naburugero Giramahoro Ajja, alleges that his client is not guilty of the charges of issuing a document by a

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competent civil servant to a person who is not entitled to it against him, as those involved in that transfer, Dorisi Melchiade and Hakizimana Sylvain, did not first show him the the purchase agreement, therefore he would not be prosecuted in a criminal case, but would be punished in the context of his work, if there were any mistakes he would have made. Determination of the Court

Article 55, section 2° of the law N° 30/2018 of 02/06/2018 determining the jurisdiction of courts stipulates that : “A case that was finally determined at last instance may be reviewed on grounds of injustice due to one of the following reasons:(...)2 ° if during the trial, the judge showed blatant disregard for legal provisions and evidence(...).

The complaint filed by Niyibogora Christine for the review of the judgment RPA 00572/2017 / HC / MUS

- RPA 00010/2018 / HC / MUS - RPA 00018/208 / HC / MUS rendered on 26/07/2018 by the High Court, Musanze Chamber , on the grounds of injustice, supported by the Prosecution, aims at proving that there was an evidence ignored by the Court, and acquitted Dorisi Melchiade and Hakizimana Sylvain of the crime of counterfeit or use of a counterfeit document convicted by Musanze Intermediate Court, the document which is a contract for the purchase agreement of the plot n° UPI 04/03/08/03/992 MUS/MUH, located in Mpenge Cell, Muhoza Sector, Musanze District, Northern Province with the date prior to the marriage of Niyibogora Christine and Dorisi Melchiade (antidaté), the agreement said to

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have been executed on 22/07/2011, brought it before the Notary of the Land who officiated the purchase on 28/10/2016, while Naburugero Giramahoro Ajja was acquitted of the charge of issuing a document by a competent civil servant to a person who is not entitled to it, who committed the crime with the aim of depriving her of the rights to the property as a wife who was married to Dorisi Melchiade under community of property regime, and she is requesting compensation for that purpose. - With regard to the case of Dorisi Melchiade and Hakizimana Sylvain

Article 614, sections 1° and 3°, of Organic Law N° 01/2012 / OL of 02/05/2012 instituting Penal Code which was into force at the time of the prosecution, provides that : “Any person who :1° knowingly issues a document containing materially incorrect facts; (...), knowingly uses an inaccurate or falsified document; shall be liable to a term of imprisonment of more than five (5) years to seven (7) years and a fine of five hundred thousand (500,000)to two million (2,000,000) Rwandan francs”.

The main evidence in dispute in this case is the statement of the purchase agreement allegedly dated 22/07/2011 between Dorisi Melchiade and Hakizimana Sylvain, which Niyibogora Christine and the Prosecution alleges that its content that Dorisi Melchiade sold a plot to Hakizimana Sylvain was not true, because the land belongs to Dorisi Melchiade and Niyibogora Christine who are married under community of property regime, built in the house, lived in it, and the agreement was counterfeited and given the date prior to their marriage,

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Dorisi Melchiade intended to win the house they shared when he was planning to file for divorce.

Another ground for Niyibogora Christine and the Prosecution is the land transfer agreement dated 28/10/2016 signed by Dorisi Melchiade and Hakizimana Sylvain, before the Notary, which was also the basis for the transfer of land titles (mutation), that they did so knowing full well that no purchase had taken place, therefore, this should be considered as a counterfeit.

The documents in the file show that on 15/09/2011, Doris Melchiade was married to Niyibogora Christine under community of property regime, that on 05/10/2011, Dorisi Melchiade entered into a permanent lease agreement with the Government of Rwanda n° 0992 / MUS / MUH in the plot n° 4/03/08/03/992, and it was 100% registered to him

The file also states that after receiving the land, Dorisi Melchiade was taxed for all the years from 2011 to 2016 when he transferred it to Sylvain Hakizimana, who applied for a permit to build it, and did it, living in the house with his wife NIYIBOGORA Christine until 28/01/2019 when they divorced in the judgment RC 00071/2018 / TB / MUH-RC 00188/2017 / TB / MUH rendered by Muhoza Primary Court.

It is clear that in that judgment, Dorisi Melchiade had complained that his wife has left the household, and that she has been harassing him by the fact that she has been dragging him in unnecessary lawsuits , which Niyibogora Christine denied, stating that she was studying

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medicine at the University in Butare, and was working in various hospitals in Butare and Kigali, which enabled them to build their house in Mpenge Cell, Muhoza Sector, Musanze District (see paragraph 4, page 3 of case RC 00071/2018 / TB / MUH-RC 00188/2017 / TB / MUH).

The Court finds that on 15/09/2011 when Dorisi Melchiade married to Niyibogora Christine, he had a plot, as it was registered to him on 05/10/2011 on n° 4/03/08/03/992, and therefore cannot claim to be 100% his, because in the community of property regime entails that any property registered in one spouse's name is part of the property belonging to spouses under the community of property regime, as stipulated in the Article 6, paragraph 3 of Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions .

The Court finds therefore that the purchase agreement for the plot n° PC 992 said to have been concluded on 22/07/2011 between Dorisi Melchiade and Hakizimana Sylvain stating that he sold to him a plot he bought with Nsanzuwera Désiré, that he paid him two million three hundred thousand, with a nota bene stating that: "I hereby agree to make a transfer for him at any time he will be available and I will fully pay for all required money", which is not true, as the plot was registered to Doris Melchiade on 05/10/2011, so he could not sell the property on 22/07/2011 which was not registered to him at that time, but, as mentioned above, at that time of land registration, the plot was already a joint property with his wife, as they were married on 15/09/2011 under community of property regime.

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The court also finds that the purchase agreement was untrue, adding that in doing so they added a note stating that DORISI Melchiade had decided to carry out the land transfer whenever he wanted to, so that they could explain why they had not changed it in due course for the property to be registered to its buyer.

The court also finds that what Dorisi Melchiade and his counsel argue in the divorce case RC 00071/2018 / TB / MUH and RC 00188/2017 / TB / MUH dated 28/01/2019 contradicts the statements of Niyibogora Christine's counsel, because she herself testified before the Court that she had no property with Dorisi Melchiade, and that her statement came two (2) years after the case n° RP 00205/2017/TGI/MUS was decided on 07/12/2017, is baseless, because as noted above, Niyibogora Christine argued that they had a house mentioned in the case, but Muhoza Primary Court, in its judgment, ignored it. By also considering the text messages (sms) Dorisi Melchiade, via his phone number 0788679458, wrote to Niyibogora Christine on her phone 0785973782 on 09/07/2016 and on 12/07/2016, as issued by MTN, it is also clear that he also agreed that they had the house in Musanze under construction, that they should not rent another one in Kigali.

With regard to the case of RADA 00006/2017/TGI/MUS, which was definitively decided on 20/01/2018 by Musanze Intermediate Court, Dorisi Melchiade and his counsel argued that the purchase agreement was in accordance with the law, the Court finds that in this case, Niyibogora Christine had sued for

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annulment of a permanent lease agreement between Hakizimana Sylvain, Twizeyimana Kwitonda Emerthe and the Rwanda Land Management Authority, and ruled that her claim was unfounded, and requested her to award various damages, and therefore there is no verdict issued by the Court that the purchase agreement was made in accordance with the law. In addition, the case was adjudicated while this one was still pending, the court also told that there has been a review of the case on the grounds of injustice, but stated that the fact that the case was finally decided does not preclude its execution, so there is no reason why the case should not be heard.

The court also finds that Dorisi Melchiade's claim that he sought Sylvain Hakizimana's building permit for the house in the plot he bought, paid taxes for him and built the house for him because he was an civil engineer, and moved in that house before it was completed and rented it for twenty thousand francs (25,000 Frw) due to the life he was living, because his wife Niyibogora Christine had abandoned him, which is also untrue, because, according to his statements before the Prosecution, he stated that he moved in that house on 30/11/2013 and rented it for 25,000 Frw, while Sylvain Hakizimana's statements, during interrogation, stated that Dorisi Melchiade had offered him consultancy services and paid him to stay in the house, but before this Court, they stated that he had lived in it for some time for free, and paid a rent later, in an attempt to reconcile the statements.

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The court also finds that, on 28/10/2016, Dorisi Melchiade and Hakizimana Sylvain, before the Land Notary, entered into a purchase agreement based on a deed dated 22/07/2011, which was also untrue, and they made a transfer of the plot and the house built in it, and they were registered to Hakizimana Sylvain, being well aware that the agreement was also a counterfeit, as the property was shared with Niyibogora Christine, as described above, for the sole purpose of

owning it as a sole proprietor, therefore, the purchase deed made before the Land Notary was a counterfeit.

Pursuant to Articles 614, Sections 1° and 3°, of Organic Law N° 01/2012 / OL of 02/05/2012, and on the foregoing, the Court finds that Dorisi Melchiade and Hakizimana Sylvain wrote the Purchase agreement n° UPI 04/03/08/03/992 MUS / MUH, which is said to have been made on 22/07/2011, when DORISI Melchiade was still single, knowing full well that its content was not true, and used it to complete the document on of 28/10/2016 of the land transfer agreement entered into before the Land Notary and they transferred the plot and the house in it, they also knew that the document was a counterfeit, and they were convicted of counterfeit and use of a counterfeit document. - With regard to Naburugero Giramahoro Ajja

Article 613 of the aforementioned Organic - Law N° 01/2012 / OL of 02/05/2012, provides that: “A civil servant who issues or causes others to issue a document mentioned in Article 612 of this Organic Law, to a person

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who is not entitled to it, shall be liable to imprisonment of more than five (5) years to ten (10) years and a fine of five hundred thousand (500,000) to two million (2,000,000) Rwandan francs”.

With regard to the registration of land deeds, Article 10 of Ministerial Order N° 002/2008 of 01/04/2008 determining the modalities of land registration, provides that : “The person applying for land registration fulfills a prescribed form set up by the Registrar. That form shall be accompanied with the following for land transfer :

- a) the minute or a certified copy of the contract of transfer when it has been passed before a public servant other than the Registrar or the competent Deputy Registrar ;
- b) the duplicate of the certificate kept by the owner of the immovable property”.

The application for the transfer of land titles based on the purchase is contained in the case file, indicating that there is a requirement to fill in the applicant's profile (Dorisi Melchiade) including marital status where he wrote that he was married, however, as of 28/10/2016 there is no legal provisions requiring him to mention his wife, or a spouse to whom the property was to be transferred.

The court finds that the allegations made by Niyibogora Christine's representative and the Prosecution that Naburugero Giramahoro Ajja had to transfer the land after summoning the spouses of Dorisi Melchiade and

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Sylvain Hakizimana are unfounded, as there was no law in place to demand it. Moreover, the fact that Dorisi Melchiade had a permanent lease agreement showing that the land was 100% registered to him, should not have raised any suspicion that the agreement aimed at depriving anyone's rights of his/her property.

With regard to the statements of Niyibogora Christine and the Prosecution that Naburugero Giramahoro Ajja worked in another Sector and issued documents without permission, the Court finds that there is a document issued by his superior in the work proving that he had that competence, and that in itself does not constitute a crime, but rather a work misconduct.

The court finds that, although the land transfer agreement between Doris Melchiade and Hakizimana Sylvain on 28/10/2016 was found to be a counterfeit, there is no evidence that the Land Notary, Naburugero Giramahoro Ajja, signed it being fully aware of that it was a counterfeit, therefore, he is not guilty of the crime of issuing a document by a competent civil servant to a person who is not entitled to it, as convicted by the Musanze Intermediate Court. -

b. To determine whether Dorisi Melchiade and Hakizimana Sylvain are liable to penalties

The Prosecution's representative argues that pursuant to Article 63 of Law N° 30/2018 of 02/06/2018 determining the jurisdiction of the courts, he requests that the Court of Appeal consider all the evidence adduced,

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and convict the accused and sentence them to six (6) years of imprisonment as ordered by Musanze Intermediate Court.

Counsel Kavuyekure Dieudonné, Dorisi Melchiade's representative, states that the prosecution has no right to request for penalties, as it did not apply for review of a judgement on grounds of being vitiated by injustice.

Nsengiyumva Enos, counsel for Naburugero Giramahoro Ajja, argues that the Prosecution should not seek the punishment of the accused, as the case has been definitively decided, and that it has come to the case as joint party", rather than a "main party". DETERMINATION OF THE COURT

Article 63 of Law N° 30/2018 of 02/06/2018 determining jurisdiction of courts provides that :
"When the Supreme Court or any other court designated by the President of the Supreme Court receives an application for review of a judgement on grounds of being vitiated by injustice, it examines the merits of the case anew and in the presence of all parties".

The court finds that although Dorisi Melchiade and Sylvain Hakizimana were convicted of counterfeit or use of a counterfeit document, they could not be liable to any sentence on grounds that the petitioner was Niyibogora Christine, and the prosecution was summoned

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to court in the review of the judgment on grounds of being vitiated by injustice in which it was a party, a case that had been finally decided by the High Court, Musanze Chamber, and therefore, it cannot request that the defendants be sentenced, as the Court acquitted them, and the Prosecution did not apply for its review, and therefore, only the damages claimed by Niyibogora Christine should be considered in this case.

The Court finds that the same line as in the judgment RS/ INJUST/RP 00006/2017/CS was decided by the Supreme Court on 29/11/2019, about the Prosecution against Nsengiyumva Fulgence who applied for the review of the judgment, Rutembesa Phocas, Gabiro David and Habimana Asman Olivier, where that Court found that Rutembesa Phocas, Gabiro David and Habimana Asman Olivier were convicted of the charges against them, but that they could not be sentenced because they were acquitted in the first instance, and the Prosecution did not appeal the decision, but only a claim for civil damages was filed and considered, based on other rendered judgments. -

d. With regard to damages claimed by Niyibogora Christine

Counsel Bizumuremyi Félix, representing Niyibogora Christine, states that NIYIBOGORA Christine is requests DORISI Melchiade, Hakizimana Sylvain and Naburugero Giramahoro Ajja to jointly award her 5,000,000 Frw as moral damages for she had been deceived by her lover, whom she married and sought property together, 4,000, 000 Frw as counsel fee at all

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levels so far, and 1,000,000 Frw unnecessary travels to the Land authorities, Sector, District and Northern Province, Banque Populaire, Musanze Branch, Investigation, the prosecution and to the courts she paid, and even for accommodation and catering bills, and a refund of the 50,000 Frw he paid as court fee.

Counsel Kavuyekure Dieudonné, Dorisi Melchiade's representative, argues that the damages claimed by Niyibogora Christine are unfounded, but that Doris Melchiade is liable to be paid by Niyibogora Christine 1,500,000 Frw for counsel fee, 1,000,000 Frw for moral damages and 500,000 Frw for procedural fee, as he was dragged in unnecessary lawsuits and did not fabricate documents.

Counsel Nsengiyumva Straton, Sylvain Hakizimana's representative, states that no compensation should be awarded to Christine Niyibogora in this injustice case, as it was due to the errors of the Court, that instead she should have awarded Hakizimana Sylvain 1,000,000 Frw for counsel fee and 500,000 Frw for moral compensation, as she continued to make his life worse and harass him by dragging him in unnecessary lawsuits.

Nsengiyumva Enos, counsel for Naburugero Giramahoro Ajja, states that his client should not pay compensation to Christine Niyibogora, because he did not wrong her, that instead, she should award Naburugero Giramahoro Ajja 200,000 Frw for travel, 100,000 Frw for the preparation of the case, 500,000 Frw for counsel fee and 1,000,000 Frw as moral damages, totaling to 1,800,000 Frw.

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DETERMINATION OF THE COURT

The court finds that, as described above, Niyibogora Christine was offended by Dorisi Melchiade and Hakizimana Sylvain, causing her grief, the damages she is claiming should be awarded discretionarily, as the damages she claims are excessive, Dorosi Melchiade and Hakizimana Sylvain should pay her 2,000,000 Frw each for moral compensation and Frw 1,000,000 for procedural and counsel fees.

As for the 50,000 Frw Niyibogora Christine's claim for refunding, the Court finds that she could not be entitled to it, as provided for in article 62, paragraph 2, of Law N° 30/2018 of 02/06/2018 determining the jurisdiction of the courts : “The applicant seeking remedy against injustice in accordance with the provisions of this Article is exempted from payment of court fees”.

The court finds that the damages for moral, procedural and counsel fees claimed by Doris Melchiade and Hakizimana Sylvain should not be awarded because they lost the case.

With regard to moral damages, procedural and counsel fees Naburugero Giramahoro Ajja requests Niyibogora Christine, the Court finds that he should not be entitled to it, as her application for the review is her legal right, and there is no evidence that she did it for the sole purpose wasting his time. The fact that Naburugero Giramahoro Ajja also became a party in this case was

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based on Article 63 of the aforementioned Law n ° 30/2018 of 02/06/2018 which stipulates that in the case of review on the grounds of injustice, all the parties to it have to be summoned again. III. DECISION OF THE COURT

Decides that the application filed by Niyibogora Christine for review of the judgment No. RPA 00572/2017 / HC / MUS - RPA 00010/2018 / HC / MUS

- RPA 00018/208 / HC / MUS rendered on 26/07/2018 by the High Court, Musanze Chamber, on the grounds of injustice, has merit in part ;

Decides that the judgment no. RPA 00572/2017 / HC / MUS - RPA 00010/2018 / HC / MUS - RPA 00018/208 / HC / MUS rendered by the High Court, Musanze Chamber on 26/07/2018, is reversed in whole ;

Convicts Dorisi Melchiade and Hakizimana Sylvain of counterfeit and use of a counterfeit document ;

Decides that no sentence is imposed on them because the application for the review of the judgment on grounds of being vitiated by injustice was only filed for civil damages ;

Decides that Naburugero Giramahoro Ajja is acquitted of the charges against him ;

Orders Dorisi Melchiade and Hakizimana Sylvain to jointly pay Niyibogora Christine 2,000,000 Frw as

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moral compensation and 1,000,000 Frw for procedural and counsel fees ;

Orders that court fees be transferred to Public Treasury.

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